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Remarks

I. Introduction

This is in response to the Office Action dated August 20, 2008. The Office Action rejected claims 1-22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,136,922 to Sundaram et al. ("Sundaram") in view of U.S. Patent No. 7,099,936 to Chase et al. ("Chase").

In response, Applicants have amended claims 1 and 11. Claims 1-22 remain for consideration.

II. Rejections under 35 U.S.C. §103(a)

Independent claims 1 and 11 were rejected as being unpatentable over Sundaram in view of Chase.

In order to "establish *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art." In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Furthermore, "all words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). See also MPEP § 2143.03. Neither of the cited references, either alone or in combination, teach all of the claim limitations of currently amended independent claim 1. Therefore, Applicants request the withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a).

The subject area of the present invention involves a unified web hosting and content distribution system and method for assuring predetermined performance levels (such as maximum allowed response time or bandwidth usage). Figure 5.2 shows one embodiment of the present invention described in paragraph [0031] of the Specification in which the load placed on the hosting center increases to the point where a customer-specific threshold is triggered in the monitoring system 12, causing **some or all of the user requests** to be directed to CDN A, in order that the requested content can be served in accordance with a predetermined service level. As described in paragraph [0031] of the Specification, "content can be served from both the hosting center 11 and

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CDN A at the same time. Thus some client machine requests will still be directed to hosting center 11, while others will be directed to CDN A." As shown in Figures 5.1-5.3, for each DNS request, a redirection means returns a record indicating that that request should be handled by a hosting center or a CDN.

This aspect of determining the content of the record to be transmitted in response to a request on a request by request basis is claimed in currently amended independent claim 1 which includes the limitations:

> wherein, based on signals from the monitoring means, **the redirection means of the primary service provider returns a record to the local DNS indicating whether or not the first web hosting server is capable of meeting the predetermined operational service performance level for each DNS request received from the local DNS**, and
> the redirection means sending the local DNS a record including an IP address of the first web hosting server for each DNS request received from the local DNS when a performance value is below a predetermined operational performance level threshold, and
> the redirection means sending the local DNS a different record causing the local DNS to make a subsequent DNS request to a DNS of the at least one content distribution network for each DNS request received from the local DNS when the performance value is equal to or above the predetermined operational performance level threshold.

Sundaram and Chase, either alone or in combination, do not disclose these limitations and, as such, cannot render currently amended independent claim 1 obvious.

Sundaram discloses a method and system for providing on-demand content delivery for an origin server in which an infrastructure "insurance" mechanism enables a Web site to fail over to a content delivery network (CDN) upon a given occurrence at the site. Figure 3 of Sundaram is a flow chart depicting how the site insurance is triggered upon determination of an occurrence of a given event at origin server 200. As shown in steps 302 and 304 of Sundaram Figure 3, if a given event has occurred, a DNS record is rewritten. This DNS record is described in column 5, lines 11-43 as causing requests for associated content to be redirected from origin server 200 to CDN-specific domain. Steps 308 and 310 of the Sundaram flowchart of Figure 3 indicate that the DNS record

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is rewritten only after the given event has ended. Once a triggering event occurs, Sundaram discloses that all requests are directed to the server identified by the DNS record written at either step 304 or 310. Thus, the redirection of a request as disclosed in Sundaram is determined for all requests in response to a triggering event and not in response to each request as claimed in currently amended independent claim 1. Therefore, Sundaram does not disclose each and every limitation of currently amended independent claim 1. Chase fails to provide the limitations missing from Sundaram.

Chase discloses a multi-level service level agreement method and system in which "content is edgified only where the performance enhancement provided by the edgification of the content can be justified. Specifically content can be edgified where the cost to edgify the content can be justified in view of the requirements of the customer." (Chase column 4, lines 20-25) Although Chase discloses content that can be accessed from multiple locations, such as a content host or CDN, Chase does not disclose when this determination occurs or whether it is in response to an occurrence or on a request by request basis. Thus, Chase fails to provide the limitations missing from Sundaram.

For reasons discussed above, Sundaram and Chase, alone or in combination, fail to disclose each and every limitation of currently amended independent claim 1. Since the cited references do not disclose each and every limitation of currently amended claim 1, the cited references cannot render currently amended claim 1 obvious. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 1 under 35 U.S.C. 103(a) as being unpatentable over Sundaram in view of Chase.

Independent claim 11 was rejected under 35 U.S.C. §103(a) for reasons similar to those used to reject independent claim 1. Claim 11 has been amended similarly to claim 1 and therefore cannot be anticipated by the cited references for the same reasons discussed above in connection with independent claim 1. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 11 under 35 U.S.C. §103(a) as being unpatentable over Sundaram in view of Chase.

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For the reasons discussed above, all independent claims are allowable over the cited art. Allowance of all independent claims is requested.

All remaining dependent claims are dependent upon an allowable independent claim and are therefore also allowable.
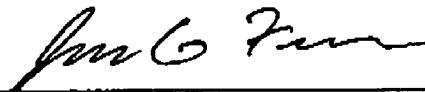
III. No New Matter has Been Added

The amendments to claims 1 and 11 do not add new matter. Support for these amendments can be found at least in Figures 5.1-5.3 and paragraph [0031] of the present Specfication.

IV. Conclusion

For the reasons discussed above, all pending claims are allowable over the cited art. Reconsideration and allowance of all claims is respectfully requested.

Respectfully submitted,

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Date: January 21, 2009
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